Insula deserta?

Thoughts on the History of International Law Scholarship in Central Eastern and Eastern Europe

Lauri Mälksoo*

I

The present volume of the Baltic Yearbook of International Law deals with the topic of the history of the international law scholarship in Central Eastern and Eastern Europe. The articles in the thematic section grew out from the international symposium entitled “From the Past to the Present and the Future: The History of the International Law Scholarship in Central Eastern and Eastern Europe” that took place at the University of Tartu on 29–30 April 2006. The symposium was coorganized by the Faculty of Law of the University of Tartu and the Faculty of Law of Humboldt University, Berlin. The event was sponsored by the Volkswagenstiftung, and together with Professor Tomuschat we, the organizers, would like to express our gratitude to the Foundation – and in particular to Dr. Wolfgang Levermann – for having made this symposium possible.

The following scholars made presentations in Tartu: William Butler (Penn State University), Olga Bytkevich (Kyiv), Anthony Carty (Aberdeen), Władysław Czapliński (Warsaw), Vojin Dimitrijević (Belgrade), Bardo Fassbender (Berlin), Vitali S. Ivanenko (St Petersburg), David Kennedy (Boston), Péter Kovács (Miskolc), Julia Laffranque (Tartu), Lauri Mälksoo (Tartu), Vygante Milasiute (Vilnius), Iulia Motoc (Bucarest), Boldizsár Nagy (Budapest), Janne Nijman (Amsterdam), Carmen Schmidt (Cologne), Pavel Šturma (Prague), Christian Tomuschat (Berlin), Karoyna Wierczyńska (Warsaw), Karl-Heinz Ziegler (Hamburg), Ineta Ziemele (Riga/Strasbourg), Katharina Zobel (Frankfurt am Main).

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A number of participants of the Tartu symposium mentioned that it was the right time to study and discuss the history of the international law scholarship in Eastern and Central Eastern Europe. Furthermore, upon the initiative of Professor William E. Butler, the *East European and Russian Yearbook of International and Comparative Law* was founded.

On 30 September 2006, a smaller follow-up seminar with particular emphasis on the history of the international law scholarship in Russia took place in Tartu. The presentations were made by Jean Allain (Belfast), Yuri Kolosov (Moscow), Marju Luts (Tartu) and Ilja Rachkov (Moscow). This seminar was also supported by the *Volkswagenstiftung*, and we would, once again, like to thank the Foundation for its help.

While most articles in this volume have grown out from the presentations made in Tartu, two authors could not come to Tartu at that time (Vladimir-Djuro Degan and Peter Holquist). They have been invited to join in with their articles.

II

Why study the history of the international law scholarship in Central Eastern and Eastern Europe? This question enshrines several subquestions. The first is: why study the history of international law scholarship in general?

Traditionally, scholars of international law have been more interested in the history of international law *per se* rather than the history of international law scholarship. For example, in the history of international law written by Wilhelm Grewe, the history of international law scholarship is a mere sideshow of and commentary upon the main point of interest: the development of international law as applied and developed in the state practice. This preference can partly be explained with the dominant influence of positivism on the European international law scholarship during the late-19th and the 20th centuries. To emphasize, the subjective creative role of the international lawyers on the background of the “objectively existing and developing legal system” seemed to undermine the collective effort of the very same international lawyers to show that the rule of law in international relations had to be taken seriously. Downplaying the role of the international law scholars in explaining the development of the law of nations was thus also an act of self-restraint.

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